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Letter dated 5 September 2006 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General

As President pro tempore of the Common Market of the South (MERCOSUR), the Government of the Federative Republic of Brazil has the honour to transmit to you the document entitled "Discussion of the Issue of Migration at the meeting of Ministers of the Interior of MERCOSUR and Associated States", prepared by the fourteenth meeting of the Specialized Forum on Migration of the meeting of Ministers of the Interior of MERCOSUR and associated States held in the city of Fortaleza, Brazil, from 22 to 24 August 2006 (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, as a contribution by the Specialized Forum on Migration to the discussions that will take place under agenda item 54 (b), as well as to the High-level Dialogue on International Migration and Development to be held on 14 and 15 September 2006.

(*Signed*) Ronaldo Mota **Sardenberg**
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Annex to the letter dated 5 September 2006 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General

Discussion of the Issue of Migration at the meeting of Ministers of the Interior of MERCOSUR and associated States

The issue of migration has been included in the agenda of the Common Market of the South (MERCOSUR) since its inception in 1991 when the Treaty of Asunción was adopted. This regional bloc, formed by the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the Eastern Republic of Uruguay and the Bolivarian Republic of Venezuela, as member States, also includes the participation of the Republic of Bolivia, the Republic of Chile, the Republic of Colombia, the Republic of Ecuador and the Republic of Peru, as associated States.

The Council of the Common Market (CMC) is the governing body of MERCOSUR which is responsible for the political leadership of the integration process and decision-making in order to ensure the fulfilment of the objectives established in the Treaty of Asunción. By Decision No. 07/96 of 17 December 1996, CMC created the meeting of Ministers of the Interior of MERCOSUR for the discussion of migration, security and other issues under the purview of these ministries in order to further cooperation, policy coordination and the development of common mechanisms to strengthen regional integration.

Although migration and security issues were initially considered together, in recent years the meeting of the Ministers of the Interior has dealt with these issues separately, in two different bodies, one composed of migration experts, and the other composed of security experts. These two bodies usually meet separately. In exceptional cases, where warranted, they work jointly to seek balanced solutions from both perspectives. This working mechanism has made significant advances possible, including the adoption of important multilateral declarations and agreements to facilitate freedom of movement and the protection of the human rights of the nationals of member and associated States, as well as those of their families, and to enhance regional cooperation in order to combat the smuggling of migrants and trafficking in persons.

It is relevant to note that 10 countries participate in the meeting of Ministers of the Interior of MERCOSUR and associated States referred to in the first paragraph of this report. The instruments negotiated in this area are binding on their signatory States and lay the groundwork for a South American migration policy.

The bloc of MERCOSUR and associated States coexists with and covers the same geographic area as the South American Conference on Migration, which is a non-binding consultative process in which positions on various aspects of the migration issue are discussed, experiences are exchanged and best practices are suggested to serve as a basis for addressing migration issues considered by the meeting of Ministers of the Interior of MERCOSUR and associated States.

(a) Specialized Forum on Migration

The Forum was created at the meeting of Ministers of the Interior, held in Montevideo, Uruguay, on 21 November 2003,[1] in order to (i) study the impact of regional and extraregional migration on the development of member and associated States; (ii) analyse and present proposals or recommendations on the harmonization of migration legislation and policies; (iii) establish regional actions to improve the regulation of migration; (iv) elaborate draft agreements or recommendations on the basis of the programme of work that can be submitted to the meeting of the Ministers of the Interior for its consideration and approval; and (v) follow up and evaluate the results of migration agreements adopted within the framework of MERCOSUR.

The Forum meetings are held six times a year and are coordinated by the member State that is serving as President pro tempore of MERCOSUR. The programme of work and the schedule of meetings are fixed during the final meeting of each semester, taking into account pending issues and proposals submitted by the various delegations. The conclusions, recommendations, initiatives or draft agreements taken up by the Forum are adopted by consensus and submitted to the meeting of the Ministers of the Interior for its consideration, evaluation and subsequent approval at its regular session.

(b) Human rights of migrants

The meeting of Ministers of the Interior adopted various agreements and one declaration of principles with a view to protecting the human rights of migrants in the region.

Santiago Declaration on Migration Principles[2]

The Extraordinary Meeting of Ministers of the Interior of MERCOSUR, Bolivia, Chile and Peru, held on 17 May 2004, considered migration issues common to the region. At the close of the meeting, the representatives of the seven countries adopted the "Santiago Declaration on Migration Principles" recognizing the contributions of migrants to the development of the signatory countries and reaffirming their commitment to the human rights of migrants.

In the Declaration, the signatories emphasized that the issue of migration in the region must be considered "through mechanisms of open multilateral dialogue as a way of enhancing the integration process"; that "MERCOSUR must reaffirm to the rest of the world its commitment to work towards a new migration policy based on the principle of respect for human rights and on its desire to participate in international relations"; that the "effectiveness of the migration policy will depend on its alignment with regional and international reality and acceptance of the fact that the regularization of the status of migrants is the only way to achieve their full integration into the host society"; that "the treatment given to nationals of the member and associated States of MERCOSUR in other countries must be the same as the treatment those nationals receive in our territory"; and that it is the "responsibility of the member and associated States of MERCOSUR to take

[1] A record of the meeting is contained in MERCOSUR/XIVRMI/ACTA 02/03 — Annex VII.

[2] The text of the Santiago Declaration on Migration Principles is contained in the annex to this document.

coordinated action to combat and prevent trafficking in persons and the abuses inherent in clandestine immigration in the region".

They also recognized "the important contribution of migrants to the development of our States" and reaffirmed their commitment to continue "welcoming migrants and ensuring respect for their human rights and all rights recognized by the relevant international conventions in force". They agreed to coordinate police and judicial measures to combat "smuggling of migrants, trafficking in persons, trafficking in children and other forms of transnational crime" and on the need to strengthen initiatives to "facilitate and regulate migratory flows" in the region, and pledged to guarantee respect for the human rights of migrants, reaffirming the commitment of the States to "grant and promote international protection to refugees". They called on nations that are not members of MERCOSUR to grant the same "just and humanitarian" treatment to emigrants from the region as that accorded to their nationals. They also recognized the right of States to exercise adequate border control but "without criminalizing the irregular status of migrants" and they condemned the practices of xenophobia, mass deportations and detention without legal justification.

Finally, they reaffirmed the importance of promoting initiatives to facilitate migratory flows among the countries of the region, on the understanding that "the regularization of migrants is the only viable path to their full integration into their host societies" and they stressed "the importance of reuniting families as a necessary element for the full stability of immigrants, as the family is the foundation of society".

The Santiago Declaration on Migration Principles was the basis on which MERCOSUR initiated negotiations with the European Community for a future agreement on migration between the two regional blocs. The Specialized Forum on Migration has actively participated in these negotiations.

Agreement on residency for nationals

In 2002, the meeting of Ministers of the Interior submitted for the consideration of the Council of the Common Market (CMC) draft agreements No. 13/02 on "Residency for the nationals of the member States of MERCOSUR" and No. 14/02 on "Residency for the nationals of the member States of MERCOSUR and the associated States Bolivia and Chile", which were adopted at the twenty-third CMC meeting, held in Brasília, Brazil, on 6 December 2002.[3]

The adoption of both agreements was motivated by the need to continue the strengthening and enhancement of the integration process through the implementation of a policy on mechanisms to expedite the regularization of migrant status and ultimately guarantee the freedom of movement of persons in the region. In order to achieve these objectives, it was agreed that "the nationals of a member or associated State who wish to reside in the territory of another member or associated State, can obtain legal residency in the latter by furnishing proof of their nationality". It also provides that people who have obtained their residency under the provisions of these Agreements have the "right to freely enter, exit, move about

[3] Decision of the Council of the Common Market No. 28/02 approving the signature of the agreements adopted at the twenty-second meeting of Ministers of the Interior of MERCOSUR, the Republic of Bolivia and the Republic of Chile (MERCOSUR/CMC/DEC No. 28/02)

and stay in the territory of the host country" and "may engage in any self-employed or salaried activity, in the same conditions as the nationals of the host country, in accordance with the legal rules of each country".

In addition, both instruments set out a number of rights of immigrants and their families, including:

Equal rights: nationals of member States and their families who have obtained residency shall enjoy the same civil, social, cultural and economic rights and freedoms as the nationals of the host country, in particular the right to work and to exercise any legal activity under conditions provided for by law, to petition the authorities, to enter, stay, transit through and exit the territory of member States, to assemble for legal purposes and to freely practise their religion.

Family reunification: family members who are not nationals of one of the member States shall be issued a residency permit identical to that of the person on whom they are dependent.

Equal treatment of nationals and non-nationals: while in the territory of member States, immigrants shall enjoy treatment that is not less favourable than that accorded to nationals of the host country concerning the application of labour legislation, in particular with respect to remuneration, working conditions and social security.

Commitment regarding social welfare: member States will analyse the feasibility of signing reciprocity agreements on social welfare.

Right to transfer remittances: immigrants of member States shall have the right to freely transfer to their country of origin their personal income and savings, in particular, the funds necessary to support their families, in accordance with the domestic regulations and legislation of each member State.

Rights of the children of immigrants: the children of immigrants who are born in the territory of a member State shall have the right to have a name, have their birth registered and hold a nationality, in accordance with the respective domestic legislation. Furthermore, they shall enjoy the fundamental right of access to education in the host country, on an equal footing with its nationals, in the territory of all member States. Access to preschool education or public schools shall not be denied or limited merely because their parents' status may be irregular.

The Agreements also establish various cooperation mechanisms designed to prevent, detect and punish any natural or legal persons who illegally employ nationals of member States. Such measures "shall not affect the rights that may correspond to immigrant workers as a result of the work carried out under those conditions". Finally, both Agreements provide that they shall be applicable "without prejudice to the domestic rules or provisions that may be more favourable to immigrants of each member State".

Agreements on domestic procedures for regularizing migrant status

In 2002, the meeting of Ministers of the Interior submitted for the consideration of the Council of the Common Market (CMC) draft agreements No. 11/02 on "Domestic procedures for regularizing the migrant status of nationals of the member States of MERCOSUR", and No. 12/02 on "Domestic procedures for regularizing the migrant status of nationals of the member States of MERCOSUR,

Bolivia and Chile", in order to facilitate, through legal instruments on cooperation, procedures by which nationals of member and associated States could regularize their migrant status without having to return to their countries of origin. These agreements were adopted at the CMC meeting in Brasilia, Brazil, on 6 December 2002.[4]

(c) Smuggling of migrants and trafficking in persons

In the meeting of the Ministers of the Interior, various initiatives regarding the smuggling of migrants and trafficking in persons were adopted.

Asunción Declaration on Trafficking in Persons and Smuggling of Migrants

This Declaration was adopted on 8 June 2001 in Asunción, Republic of Paraguay, at the meeting of the Ministers of the Interior. The Ministers, deeply concerned by the situations confronting victims of criminal organizations that profit from trafficking in persons and smuggling of migrants, and aware that the abhorrent practices of trafficking in persons and smuggling of migrants, in all their forms, require the adoption of concerted measures at the regional level as well as greater cooperation among countries in order to combat this typically transnational criminal activity more effectively, decided to sign the "Asunción Declaration".[5]

The signatories of this Declaration condemned the abhorrent practices of trafficking in persons and smuggling of migrants and expressed their determination to guarantee full respect for the human rights of migrants and their families; their commitment to adopt the legislative measures necessary to criminalize trafficking in persons and smuggling of migrants, as well as the illegal activities that are committed in order to make possible or facilitate such acts; their aim to establish regional cooperation mechanisms for technical assistance and training in the investigation and detection of organizations specializing in trafficking in persons and smuggling of migrants; their decision to coordinate mechanisms for the detection of falsified documents; their dedication to promote the exchange of information and cooperation for technical assistance and training human resources for the treatment of the victims of traffickers in persons and smugglers of migrants, especially women and children; and their determination to adopt effective measures to prevent their countries from being used as routes for trafficking in persons and smuggling of migrants to other States, in particular those of MERCOSUR, Bolivia and Chile.

Agreements concerning the smuggling of migrants

In 2004, the meeting of Ministers of the Interior submitted for the consideration of the Council of the Common Market (CMC) a draft "Agreement concerning the smuggling of migrants among the member States of MERCOSUR"

[4] Decision of the Council of the Common Market No. 28/02, approving the signature of the agreements adopted at the twenty-second meeting of Ministers of the Interior of MERCOSUR, the Republic of Bolivia and the Republic of Chile (MERCOSUR/CMC/DEC No. 28/02).

[5] It was signed by the Minister of the Interior of Argentina, the Minister of Justice of the Federative Republic of Brazil, the Minister of the Interior of the Republic of Paraguay, the Minister of the Interior of the Eastern Republic of Uruguay, the member States of MERCOSUR, the Minister of Government of the Republic of Bolivia and the Minister of the Interior of the Republic of Chile.

and a draft "Agreement concerning the smuggling of migrants among the member States of MERCOSUR and the associated States Bolivia and Chile", which were adopted within the context of the twenty-seventh meeting of CMC, held in Belo Horizonte, Brazil, on 16 December 2004.[6]

At that time, CMC considered that effective actions to prevent and combat the smuggling of migrants require cooperation, the exchange of information and joint action among the States of the region; that the Asunción Declaration unanimously expressed the need to adopt measures to prevent, detect and punish this criminal behaviour, and the need for a common procedure to act on the matter, through the coordinated participation of the security and/or police forces and other law enforcement agencies.

Both agreements aim to prevent and combat the smuggling of migrants as well as to promote cooperation and the exchange of information among member States and to protect the victims of these crimes. The instruments include definitions and various provisions of the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime.

Montevideo Declaration against trafficking in persons in the Southern Common Market and associated States

This Declaration was adopted on 18 November 2005 at the meeting of Ministers of the Interior of MERCOSUR and associated States held in Montevideo, Uruguay.[7]

The participants, concerned about the international growth of a complex crime that affects vulnerable persons, in particular women and children, aware of the importance of pooling efforts through effective cooperation among the countries of the region and committed to seeking joint mechanisms to successfully prevent and combat organized networks that profit from the exploitation of persons, decided to adopt the Montevideo Declaration, in which they condemned the crime of trafficking in persons and called for robust measures to prevent and combat the scourge of trafficking in persons in the region; the criminalization of trafficking in persons in the legislation of the States that are signatories of the Declaration; the development of programmes to strengthen institutions in order to improve the efficiency and effectiveness of the organizational structures for the regulation of migration, and for preventing and combating the networks that profit from the exploitation of persons and providing assistance to their victims; action to protect and help the victims of trafficking in persons; legislative measures to confiscate the means used for and proceeds derived from this crime; awareness-raising campaigns

[6] Decision of the Council of the Common Market No. 37/04 adopting the Agreements concerning the smuggling of migrants of 16 December 2004 (MERCOSUR/CMC/DEC No. 37/04).

[7] It was signed by the Minister of the Interior of the Argentine Republic, the Deputy Minister of Justice of the Federative Republic of Brazil, the Deputy Minister of Political Affairs of the Ministry of the Interior of the Republic of Paraguay, the Minister of the Interior of the Eastern Republic of Uruguay, the Minister of Government of the Republic of Bolivia, the Under-Secretary of the Interior of the Republic of Chile, the Representative of the Minister of the Interior of the Republic of Peru, the Minister of the Interior of the Republic of Ecuador, the Deputy Minister of the Interior of the Republic of Colombia and the Minister of the Interior and Justice of the Bolivarian Republic of Venezuela.

in the mass media to educate society and warn potential victims; incentives for training of civil servants and public officials; and regional cooperation to eliminate the crime of trafficking in persons, increase inter-institutional collaboration and the exchange of information, and optimize existing computer resources and the drafting of joint proposals.

This Declaration was welcomed by the Presidents of the member States of MERCOSUR and associated States[8] and was disseminated at the first Organization of American States Meeting of National Authorities on Trafficking in Persons, held in Venezuela in March 2006.

MERCOSUR plan of action against trafficking in persons

This plan was adopted at the meeting of Ministers of the Interior of MERCOSUR and associated States, held in Buenos Aires on 8 June 2006. Its objective is to create an operational and efficient mechanism for cooperation, coordination and follow-up with respect to trafficking in persons, in an effort to promote a comprehensive response to the problem in the territory of the countries of MERCOSUR and associated States. This regional approach to combating trafficking in persons is aimed at addressing the need to reduce this crime and to put effective preventive measures into practice as quickly as possible.

In order to carry out the plan of action, biannual meetings will be held to review progress achieved, initiatives and proposals. The plan also considers the development of campaigns to raise awareness of and alert society to the issue of trafficking in persons; the campaigns will be launched simultaneously in all the countries of the region. In addition to offering information about the crime, the campaign is designed to raise public awareness and to encourage civil society to report information to the authorities. To that end, with the collaboration of the media, it seeks to provide the information necessary to identify a crime of this type, know where and how to report it and generate collective awareness in society. The plan urges States to implement mechanisms to regularize the migrant status of victims.

(d) Joint communiqué of the Presidents of MERCOSUR and associated States

On 21 July 2006, the Presidents of MERCOSUR and associated States, at the thirtieth meeting of the Council of the Common Market, reiterated their firm commitment to the values of integration, peace, strengthening multilateralism, development, democracy and human rights, and welcomed the progress made by the regional bloc with the incorporation of Venezuela as a member State as well as the sectoral progress made in every aspect of integration.

With respect to the advances made in the meeting of Ministers of the Interior, they:

> "5. Emphasized their commitment to implement a Migration Regularization Programme throughout the territory of MERCOSUR and associated States for their nationals. In that connection, they thanked the Argentine Republic for its unilateral implementation of the MERCOSUR

[8] Article 23 of the Joint Communiqué of the Presidents of MERCOSUR and associated States, Montevideo, Uruguay, 9 December 2005, twenty-ninth meeting of the Council of the Common Market.

Agreement on residency ('*Patria Grande* Programme') that was the result of negotiations conducted during the meeting of Ministers of the Interior;

6. Highlighted the importance of the Agreement on the granting of a 90-day stay for tourists who are nationals of member and associated States, negotiated in the meeting of the Forum on Migration; and

7. Welcomed the adoption of the Agreement on the verification of entry and exit documentation for minors among member and associated States of MERCOSUR, given the importance of establishing legal instruments for cooperation that will ensure greater supervision and protection of minors, whether they are nationals or residents."